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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,444	05/31/2001	Thomas W. Nickerson	O-207	8887

51444 7590 02/19/2010

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ART UNIT	PAPER NUMBER
2446	

NOTIFICATION DATE	DELIVERY MODE
02/19/2010	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS W. NICKERSON

Appeal 2009-001389
Application 09/871,444[1]
Technology Center 2400

Decided: February 17, 2010

Before LEE E. BARRETT, JEAN R. HOMERE, and DEBRA K. STEPHENS, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] Filed on May 31, 2001. The real party in interest is Oracle Corp. (App. Br. 3.)

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) (2002) from the Examiner's final rejection of claims 13, 14, 32, 33, and 36 through 51. (App. Br. 3.)[2] Claims 1 through 12, 15 through 31, 34, and 35 have been cancelled. (*Id.*) We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm.

Appellant's Invention

Appellant invented a method and computer program product for displaying dynamic page content in a page-caching browser by allowing the browser to load page content from a host server regardless of whether caching is enabled. (Spec. 18, ll. 17-20.) According to Appellant, the claimed invention relates to avoiding the display of unintended page content thereby facilitating the use of dynamically changing web pages. (*Id.* at ll. 20-22.)

Illustrative Claim

Independent claim 13 further illustrates the invention as follows:

> 13. A computer program product, comprising:
> a computer-readable memory device; and
> computer-readable program code segments, stored on the computer readable memory device, for:
> receiving, at a client having a local cache, input related to a request for content of a web page, the request including an address for the web page; and
> in response to receiving the input:
> determining, at the client, that there is content associated with the web page in the local cache;
> inserting, at the client, a unique identifier into the address; and

[2] See the Amended Appeal Brief filed on July 6, 2008, which only includes a revised status of claims on appeal and summary of claimed subject matter.

transmitting the request with the inserted unique identifier to a server.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Lam	6,249,804 B1	Jun. 19, 2001 (filed Jul. 22, 1998)
Lambert	2002/0038350 A1	Mar. 28, 2002 (filed Apr. 30, 2001)

How does JavaScript work and how can I build simple calculators with it?, HOWSTUFFWORKS, Jul. 14, 2008, www.hotstuffworks.com (hereinafter "How Stuff Works").

Rejection on Appeal[3]

The Examiner rejects the claims on appeal as follows:

Claims 13, 14, 32, 33, and 36 through 51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lam and Lambert.

Appellant's Contentions

Appellant contends that Lambert's disclosure of performing cache busting utilizing an IXC engine that operates on a web server does not teach inserting a unique identifier at a client and transmitting a request to a server. (App. Br. 9-10[4]; Reply Br. 2-3.) Further, Appellant argues there is insufficient rationale for the proffered combination. (App. Br. 8-9.) In particular, Appellant alleges that inserting a unique identifier so as to avoid

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[3] The Examiner withdrew the 35 U.S.C. § 101 rejection of claims 36 through 51. (Ans. 2-3.)

[4] Hereafter we refer to the Appeal Brief filed on May 15, 2008.

loading a page from a cache would render Lam inoperable for its intended purpose. (*Id.*) Additionally, Appellant contends that Lam's disclosure of trying to increase the number of cache hits teaches away from transmitting a request to a server when there is content associated with the address in a local cache. (*Id.*)

Examiner's Findings and Conclusions

The Examiner finds that Lambert's disclosure of Java-script amounts to a computer programming language that operates within an internet browser, also known as a web client. (Ans. 8-9.) In particular, the Examiner finds that Java-script runs on a client machine and, therefore, Lambert's disclosure of amending a timestamp utilizing Java-script teaches inserting a unique identifier at the client. (*Id.*) Further, the Examiner finds that there is sufficient rationale for the proffered combination. (*Id.* at 7.) Additionally, the Examiner finds that Lam's disclosure of only accessing entries in a local cache when they are valid does not teach away from the claimed invention. (*Id.* at 7-8.)

II. ISSUE

Has Appellant shown that the Examiner erred in concluding that the combination of Lam and Lambert renders independent claim 13 unpatentable? In particular, the issue turns on whether:

(a) the proffered combination teaches "inserting, at the client, a unique identifier into the address[] and transmitting the request…to a server," as recited in independent claim 13;

(b) there is sufficient rationale for the proffered combination; and

(c) the proffered combination is impermissible because it would render Lam inoperable for its intended purpose.

III. FINDINGS OF FACT

The following Findings of Fact ("FF") are shown by a preponderance of the evidence.

Appellant's Specification

1. Appellant's Specification states that "[w]eb browsers, such as Microsoft's Internet Explorer and Netscape's Navigator, also provide capabilities for navigating forwards and backwards among web pages already visited during a browser session." (Spec. 13, ll. 11-13.) "Typically, web browsers implement these capabilities through a navigational toolbar that includes elements, such as 'Back' and 'Forward' action buttons." (*Id.* at ll. 13-15.)

2. Appellant's Specification states that "[i]n most browsers, there is a 'refresh' or 'reload' button in the browser toolbar, which is used to update the contents of the page being viewed (e.g., static stock ticker web pages) or to reload a page that failed to load properly (e.g., certain graphics missing in display)." (Spec. 15, ll. 14-17.) "When a 'refresh' or 'reload' is attempted, the browser requests the current ["uniform resource locator"] URL/query string." (*Id.* at ll. 18-19.) "When caching is enabled, the browser loads the page content directly from cache." (*Id.* at ll. 19-20.)

Lam

3. Lam generally relates to caching Internet pages. (Col. 1, ll. 7-8.) In particular, Lam discloses that when a client clicks on a link to request an associated page, the cache performs a hit test, e.g., the cache checks for

the presence of the page. (Col. 1, l. 66 - col. 2, l. 2.) If there is a hit with an invalid response, no hit, or the client does not maintain a cache, a request is sent by the client to the original server. (Col. 2, ll. 6-8.)

Lambert

4. Lambert discloses the concept of cache busting, wherein advance markers use Java-script to generate a unique marker reference for each access of the markers. (11, para. [0230].) In particular, Lambert discloses appending a timestamp, which is seen by the caching software as a unique uniform resource locator ("URL"). (*Id.*) The Java-script code ensures that any browser that is unable to handle Java-script will run the normal image references with a reference indicating that the Java-script was not available. (11, para. [0231].) Otherwise, it generates a unique image reference using a timestamp. (*Id.*) Lambert's disclosure denotes this process as "cache-busting." (*Id.*)

IV. PRINCIPLES OF LAW

Obviousness

"On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness." *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998) (citations omitted).

> Section 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," and discussed circumstances in which a patent might be determined to be obvious. *Id.* at 415 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416. The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 417.

Official Notice

The Examiner may take notice of facts or common knowledge in the art which are capable of such instant and unquestionable demonstration as to defy dispute. *In re Ahlert*, 424 F.2d 1088, 1091 (CCPA 1970). To challenge the Examiner's notice, Appellants must present evidence to the contrary. *In re Knapp-Monarch Co.*, 296 F.2d 230, 232 (CCPA 1961) (considering challenge to taking of judicial notice by Trademark Trial and Appeal Board).

V. ANALYSIS

Claim 13

Independent claim 13 recites, in relevant part, “inserting, at the client, a unique identifier into the address[] and transmitting the request…to a server.”

As detailed in the Findings of Fact section, Lam discloses that when a client requests a web page, the local cache is checked for the presence of the web page. (FF 3.) If there is no corresponding web page in the local cache, the client requests the web page from the original server. (*Id.*) We find that Lam's disclosure teaches transmitting a web page access request to a host server when there is no corresponding web page in the local cache.

Further, Lambert discloses the concept of cache busting. (FF 4.) In particular, Lambert discloses that Java-script ensures that each web browser generates a unique web page access request using a timestamp. (*Id.*) The local cache recognizes the unique URL and transmits the web page access request to the host server. (*Id.*) We find that Lambert's disclosure teaches inserting a time stamp into a web page access request in order to generate a unique URL to access a web page associated therewith from a host server. In summary, we find that Lambert's disclosure of inserting a time stamp into a web page access request in order to generate a unique URL, in conjunction with Lam's disclosure of transmitting a web page access request to a host server when there is no corresponding web page in the local cache, teaches inserting a timestamp at the web browser in order to create a unique URL and transmitting the corresponding web page request to the host server. Therefore, the combined disclosures of Lam and Lambert teach the disputed limitation.

Rationale to Combine

The Supreme Court instructs that "[o]ften it will be necessary for a court to look to interrelated teachings of multiple patents; . . . and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason for

combining the known elements in a the fashion claimed by the patent at issue." *KSR*, 550 U.S. at 418. Upon reviewing the record before us, we find more than adequate suggestion for the proposed modification in the prior art. We find that an ordinarily skilled artisan in this art at the time of invention would have used Lam's disclosure of transmitting a web page access request to a host server, in conjunction with Lambert's disclosure of generating a unique URL by inserting a time stamp into a web page access request, in order to ensure that the data returned from the host server is newly retrieved content object.

Additionally, as set forth above, Lam discloses transmitting a web page access request to a host server when there is no corresponding web page in the local cache. (FF 3.) Lambert's disclosure complements Lam by teaching the insertion of a time stamp into a web page access request in order to generate a unique URL to access a web page associated therewith from a host server. (FF 4.) We find that the combined disclosures of Lam and Lambert disclose prior art elements that perform their ordinary functions to predictably result in displaying dynamic page content in a page-caching browser by allowing the browser to load page content from a host server regardless of whether caching is enabled. *See KSR*, 550 U.S. at 418-19. Thus, Appellant's argument that insufficient rationale exists to justify the proffered combination is unavailing.

We are not persuaded by Appellant's argument that the combination of Lam and Lambert is impermissible because it would render Lam inoperable for its intended purpose. (App. Br. 8-9.) As detailed in the Findings of Fact section above, Lam discloses that web page entries in the cache are accessed only when they are valid. (FF 3.) We find that Lam's

disclosure teaches accessing a web page from the local cache only when there is a valid, corresponding entry in the local cache. Further, Lambert discloses utilizing a unique URL in order to access a web page from a host server. (FF 4.) Thus, we conclude that Lambert's disclosure of utilizing a unique URL in order to access a web page from a host server does not undesirably encumber the purpose of accessing a web page, nor does it change Lam's disclosure of accessing a web page from the local cache only when there is valid, corresponding entry in the local cache. It follows that Appellant has failed to show that the Examiner erred in concluding that the combination of Lam and Lambert renders independent claim 13 unpatentable.

Claims 14 and 33

Appellant contends that the Examiner's Official Notice reaffirms that the claimed invention is unexpected and not obvious. (App. Br. 10-11.) In particular, Appellant argues that the Examiner is taking Official Notice of conventional browser operations, whereas the claimed invention displays dynamic page content by defeating conventional caching operation at the client. (*Id.* at 11; Reply Br. 3.) Thus, Appellant alleges that the proffered combination does not teach "determining whether the received input comprises an event requesting a currently-displayed web page to be refreshed or an event requesting navigation to a previously-displayed web page," as recited in dependent claims 14 and 33. We do not agree.

The Examiner relies upon Official Notice, in conjunction with the combined disclosures of Lam and Lambert set forth above, and avers that it is well known in the art to determine whether a request is a "back" request or

a current page refresh. (Ans. 4-5.) We find that Appellant has failed to adequately traverse the Examiner's Official Notice. In particular, Appellant has failed to provide evidence to dispel that Examiner's finding that the noticed fact is not considered to be common knowledge or well known in the art. According to MPEP § 2144.03(C) (8th ed., July 2008), since Appellant did not initially traverse the Examiner's Official Notice in the Office Action entered April 27, 2007, the officially noticed fact asserted is deemed admitted prior art.

Nonetheless, Appellant's Specification discloses that web browsers, such as Microsoft's Internet Explorer and Netscape's Navigator, are capable of both refreshing a web page and navigating backward among web pages. (FF 1-2.) We find that Appellant's Specification admits that Microsoft's Explorer and Netscape's Navigator are old and well known web browsers and, furthermore, the functions of refreshing a web page and navigating backwards among web pages are old and well known in the art. Thus, we find that the combined disclosures of Lam and Lambert, in conjunction with the Examiner's assertion of Official Notice and Appellant's admission, teach the disputed limitation. It follows that Appellant has failed to show that the Examiner erred in concluding that the combination of Lam and Lambert renders dependent claims 14 and 33 unpatentable.

Claims 32 and 36 through 51

Appellant does not provide separate arguments for patentability with respect to claims 32 and 36 through 51. Therefore, we select independent claim 13 as representative of the cited claims. Consequently, Appellant has not shown error in the Examiner's rejection of claims 32 and 36 through 51

for the reasons set forth in our discussion of independent claim 13. 37 C.F.R. § 41.37(c)(1)(vii).

VI. CONCLUSION OF LAW

Appellant has not shown that the Examiner erred in rejecting claims 13, 14, 32, 33, and 36 through 51 as being unpatentable under 35 U.S.C. § 103(a).

VII. DECISION

We affirm the Examiner's decision to reject claims 13, 14, 32, 33, and 36 through 51.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

nhl

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